

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MITCHELL ANDREW CARAVAYO,

No. C 06-06339 WHA

Petitioner,

v.

**ORDER DENYING
CERTIFICATE OF
APPEALABILITY**

DAVID L. RUNNELS, Warden,

Respondent.

Petitioner Mitchell Caravayo filed a petition for writ of habeas corpus in this case pursuant to 28 U.S.C. 2254. By order dated June 4, 2007, this Court dismissed the petition on the ground that it was filed beyond the one-year statute of limitations. Judgment was entered in favor of respondent the same day. On June 12, 2007, petitioner filed a notice of appeal. Although petitioner did not request a certificate of appealability, the notice of appeal will be deemed such a request under 28 U.S.C. 2253(c). *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).

A district court judge shall grant a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. 2253(c)(2). Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy Section 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). When the district court, as here, denies a habeas


1 petition on procedural grounds without reaching the prisoner's underlying constitutional claim,
2 a certificate of appealability should issue when the petitioner shows that jurists of reason would
3 find it debatable whether the petition states a valid claim of the denial of a constitutional right
4 and that jurists of reason would find it debatable whether the district court was correct in its
5 procedural ruling. *Id.* at 484.

6 The certificate of appealability is **DENIED**. As explained more fully in the June 4 order,
7 there were at least 565 days that passed between entry of final judgment in the direct appeal and
8 the filing of the instant habeas petition that were wholly unexplained and clearly establish the
9 untimeliness of the federal petition. This order finds that reasonable jurists would not consider
10 this point debatable.

11 The Clerk of the Court shall transmit the file, including a copy of this order, to the Court
12 of Appeals for the Ninth Circuit.

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14 **IT IS SO ORDERED.**

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16 Dated: June 26, 2007.

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19 WILLIAM ALSUP
20 UNITED STATES DISTRICT JUDGE
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